



Clearinghouse Rule 10-072

State of Wisconsin

Department of Workforce Development Unemployment Insurance Division

Coverage and Related Reports Chapter DWD 110

The Wisconsin Department of Workforce Development proposes an order to repeal 110.07 (1), (5) and (7); to renumber and amend DWD 110.07 (2); and to amend DWD 110.02 (3) and (4), 110.03, 110.04, 110.06 (3), (4) (a) to (d) and (f), (5) (c), (6), 110.07 (3), (4), (6) and (8), 110.08 (1) and (2), and 110.09 (3) (b); relating to coverage and related reports for unemployment insurance purposes.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Section 108.14 (2), 108.22, and 227.11, Stats.

Statutes interpreted: Section 108.17, 108.21, and 108.22, Stats.

Related statute or rule: Chapter DWD 111.

Explanation of agency authority. Chapter 108, Stats., requires employers to maintain work records and to submit records to the department for inspection, and to submit other reports as required by the department to determine an employer's status and contribution liability. Sections 108.14(2) and 227.11(2), Stats., authorize the department to adopt and enforce all rules the department finds necessary to carry out the requirements of Chapter 108, Stats.

Summary of the proposed rule. Wisconsin Act 59 in 2007 amended several provisions of Chapter 108, Stats., related to how employers file reports with the department, the timeliness for filing reports, and the penalties for failing to do so. The proposed rule corresponds with the statutory changes in 2007 Wis. Act 59. Section 108.17 (2) (b) was amended in 2007 Wis. Act 59 to provide that employers may be excused from filing contribution reports if they file their wage reports electronically. Section 108.17 (7), Stats., was amended in 2007 Wis. Act 59 to provide that some employers must remit contributions or other payments due electronically. The proposed rule takes into account the statutory changes to allow filing of reports and payments electronically. The rule currently provides that the time to file a report is extended if it is mailed as long as the report is postmarked by the due date or 3 days past the due date. Pursuant to the statutes as amended by 2007 Wis. Act 59, contribution reports and payments are due the last date of the month following a quarter;

this obsolete provision is removed from the rule. The reference to due dates falling on holidays or weekends is repealed because it duplicates s. 108.22(1)(b), Stats.; however, legal holidays are clarified to also include any date the Unemployment Division is closed due to furlough, or due to inclement weather or other acts of nature. The rule currently refers to a \$10,500 taxable wage base for computing the defined taxable payroll. The proposed rule refers to the taxable wage base as provided in ch. 108, Stats., rather than naming the amount because the amount is scheduled to change over time. Finally, the department reviewed the rule to eliminate provisions that were repetitive or duplicated statutory provisions, and to edit for grammatical purposes.

Summary of factual data and analytical methodologies. The department sought to conform the rule language to the changes made to the statutory provisions in 2007 Wis. Act 59. In addition, the department reviewed the rule language carefully to eliminate provisions that are unnecessarily duplicative of statutory provisions to avoid the potential problem posed by statutory changes and outdated rule language.

Summary of and comparison with federal regulations. Since 1988, federal law has required all States to have in effect, as a condition for compliance with federally aided assistance programs, a requirement that employers make quarterly reports of wages to the state. There are no federal requirements governing how states receive contribution reports.

Comparison with rules in adjacent states. Illinois rules require that an employer must pay contributions due by check accompanied by a transmittal form. Employers with 250 or more employees must file quarterly reports electronically. Contributions are due on or before the last day of the month following the end of the quarter. Where the payment is made by mail, the reports are considered timely if the postmark bears a date within the prescribed time limit. Late payments are assessed interest at the rate of 2% per month. 56 Ill. Adm. Code ss. 2760.135-.60. Iowa requires that wage reports and contributions are due the last day of the month following the end of the calendar quarter. Contributions that are mailed must be postmarked by the due date. Penalties may be applied to reports that are not received by the due date and interest of 1% per month is charged on overdue contributions. 871 Iowa Admin. Code s. 23.8 (96). Michigan requires that employer contributions are due quarterly; employers must submit contribution reports on form provided by the agency or electronically. Payments are due on or before the 25th day of the month next following the last day of the calendar quarter. Contributions paid after the 25th but before the first day of the next calendar month do not accrue interest. Mich. Admin. Code s. 421.121. Minnesota statutes require that employers file wage reports electronically and the state calculates the amount of contributions due for the employer. The contributions must be received by the department on or before the last day of the month following the end of the calendar quarter. Minn. Stat. s. 268.051.

Effect on small business. The proposed rule incorporates the changes to chapter 108, Stats., contained in 2007 Wis. Act 59, and will not have an additional effect on small business.

Analysis used to determine effect on small business. The proposed rule incorporates the changes to chapter 108, Stats., contained in 2007 Wis. Act 59, and will not have an additional effect on small business.

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Place where comments are to be submitted and deadline for submission. Comments may be submitted to Tracey Schwalbe, UI Research Attorney, Bureau of Legal Affairs, P.O. Box 8942, Madison, WI 53708; fax (608) 266-8221, or tracey.schwalbe@wisconsin.gov. The comment deadline is July 21, 2010.

SECTION 1. DWD 110.02 (3) and (4) are amended to read:

DWD 110.02 Required records to retain; retention periods; department's investigative powers.

(3) Pursuant to s. 108.21, Stats., the department may, at any reasonable time, inspect the work records and any other records of an employing unit, or of any entity that the department has reason to believe may be an employing unit, that may show payments for personal services.

(4) Each employing unit shall preserve the work records and any other records that may show payments for personal services for 6 years from the date on which each individual last performed services for the employing unit.

SECTION 2. DWD 110.03 is amended to read:

DWD 110.03 Required records and reports to submit. Pursuant to ss. 108.14 and 108.21, Stats., each employing unit shall submit any work records and any other records and reports concerning the services performed by individuals for the employing unit that the department may request. The department may require the employing unit to make either verbal or written reports or both.

SECTION 3. DWD 110.04 is amended to read:

DWD 110.04 Conditions for coverage and liability; reporting requirements. Any employing unit that meets the coverage requirements under ch. 108, Stats., shall notify the department and accurately and completely report its employment and wages so that the department may determine the employing unit's status and contribution liability. The employing unit shall submit this report to the department within 30 days after meeting the coverage requirements under ch. 108, Stats.

SECTION 4. DWD 110.06 (3), (4) (a) to (d), (f), (5) (c), and (6) are amended to read:

DWD 110.06 Liability due to sickness or accident disability payments.

(3) **PAYMENTS MADE DIRECTLY BY EMPLOYERS.** An employer that makes sickness or accident disability payments directly to an employee or his or her dependents shall be treated as the employer for contribution purposes under ch. 108, Stats., with respect to these payments.

(4) **PAYMENTS BY THIRD PARTY PAYORS AND MULTIEMPLOYER BENEFIT PLANS.** (a) *General rule for third party payors.* Except as provided in pars. (b) to (f), a third party payor that makes sickness or accident disability payments shall be treated as the employer for contribution purposes under ch. 108, Stats., with respect to these payments.

(b) *Notice by third party payors to shift tax.* If a third party payor timely notifies the employer for which services are normally performed of the amount of the sickness or accident disability payments

made during any quarter, the employer shall be treated as the employer for contribution purposes under ch. 108, Stats. The third party payor shall notify the employer, in writing, by the 15th day of the month after the end of the quarter in which the payments are made. In this paragraph, the employer for which services are normally performed is the last employer that made contributions on behalf of the employee to the plan or system under which the sickness or accident disability payments are being made and for which the employee worked prior to the sickness or disability.

(c) *Third party payors as agents or insurers.* A third party payor that makes sickness or accident disability payments as an agent for the employer or directly to the employer may not be treated as the employer for contribution purposes under ch. 108, Stats., unless the agency agreement so provides. The determining factor as to whether a third party payor is an agent of the employer is whether the third party payor bears any insurance risk and is reimbursed on a cost plus fee basis. If the third party payor bears no insurance risk and is reimbursed on a cost plus fee basis, the third party payor is an agent of the employer even if the third party payor is responsible for determining eligibility of the employee or dependent for sickness or accident disability payments. If the third party payor is paid an insurance premium and is not reimbursed on a cost plus fee basis, the third party payor is not an agent of the employer but rather a third party insurer and shall be treated as the employer for contribution purposes under ch. 108, Stats., unless the third party insurer complies with par. (b).

(d) *Relationship among third party insurers, multiemployer benefit plans and employers.* A third party insurer under a contract of insurance with a multiemployer benefit plan that is required to make sickness or accident disability payments pursuant to a collective bargaining agreement shall be treated as the employer for contribution purposes under ch. 108, Stats., with respect to these payments unless the third party insurer notifies the multiemployer benefit plan of the amount of these payments, in writing, by the 15th day of the month after the end of the quarter in which the payments are made. If such timely notice is given, the multiemployer benefit plan shall be treated as the employer unless, within 6 business days after receipt of the notice, the multiemployer benefit plan notifies the employer for which services are normally performed of the amount of the sickness or accident disability payments made during the quarter. If the multiemployer benefit plan gives such timely notice, the employer for which services are normally performed shall be treated as the employer for contribution purposes under ch. 108, Stats. In this paragraph, the employer for which services are normally performed is the last employer that made contributions on behalf of the employee to the plan or system under which the sickness or accident disability payments are being made and for which the employee worked prior to the sickness or disability.

(f) *Third party administrators for multiemployer benefit plans.* A third party administrator that makes sickness or accident disability payments as an agent for a multiemployer benefit plan may not be treated as the employer for contribution purposes under ch. 108, Stats.

(5) REQUIRED RECORDS TO RETAIN; DEPARTMENT'S POWERS.

(c) Pursuant to s. 108.21, Stats., the department may, at any reasonable time, inspect the records of a payor, or of any entity that the department has reason to believe may be a payor, that may show sickness or accident disability payments so that the department may determine the payor's status and contribution liability under ch. 108, Stats.

(6) REQUIRED RECORDS AND REPORTS TO SUBMIT. Pursuant to ss. 108.14 and 108.21, Stats., each payor of sickness or accident disability payments shall submit any records and reports concerning these payments that the department may request concerning these payments so that the department may determine the payor's status and contribution liability under ch. 108, Stats. The department may require the payor to make verbal or written reports or both.

SECTION 5. DWD 110.07 (1) is repealed:

SECTION 6. DWD 110.07 (2) is renumbered and amended to read:

(1) NONPROFIT ELECTION OF REIMBURSEMENT FINANCING. A nonprofit organization that discontinues participation in a group reimbursement account under s. 108.151 (6), Stats., may elect reimbursement financing in its own name by filing a notice of election of reimbursement financing with the department on or before December 31 of the year in which the group reimbursement account is terminated.

SECTION 7. DWD 110.07 (3) is amended to read:

(3) FILING OF CONTRIBUTION REPORTS; GENERAL DUE DATES. (a) Each employer, including a nonprofit organization that has elected reimbursement financing or a government unit on reimbursement financing, shall file an employer's contribution report with the department whether or not any contributions or reimbursement payments are currently due unless the employer is excused from filing the contribution report under s. 108.17 (2) (b). Each employer that files a contribution report shall pay any required contributions to the department concurrent with the filing of the report, except that each government unit and nonprofit organization that has elected reimbursement financing shall submit reimbursement payments when billed by the department. The department may exempt any employer whose account the department has placed on inactive status with a view toward

termination of the account from the filing requirements of this subsection. The department may also exempt any employer whose business reflects a seasonal pattern from the filing requirements of this subsection for quarters in which the employer customarily has no payroll.

SECTION 8. DWD 110.07 (4) is amended to read:

(4) DUE DATES. For purposes of determining the due dates for filing reports, a legal holiday shall include any date the Unemployment Insurance Division is closed due to furloughs, or due to inclement weather or other acts of nature.

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SECTION 9. DWD 110.07 (5) and (7) are repealed:

SECTION 10. DWD 110.07 (6) and (8) are amended to read:

(6) MONTHLY REPORTING IN CERTAIN CASES. The department may require an employer that is delinquent in submitting a contribution report or payment required under this chapter or under ch. 108, Stats., to submit succeeding contribution reports on a monthly basis until the department again approves a return to quarterly reporting. The employer shall submit the payments by the close of the month next following the end of each month.

(8) PAYMENTS. Each employer shall remit contributions and any other payments due under this chapter electronically, or if not required to remit electronically, to the address specified by the department in its correspondence with the employer in the form of a check, draft or money order payable to the department of workforce development.

SECTION 11. DWD 110.08 (1) and (2) are amended to read:

DWD 110.08 General provisions relating to reporting wages on the employer's contribution report.

(1) WISCONSIN TOTAL WAGES. Each employer shall report all covered wages paid or constructively paid during the applicable quarter on the employer's contribution report, unless the employer is excused from filing the contribution report under s. 108.17 (2) (b).

(2) CLAIMING EXCLUSIONS. Each employer shall total the amount of wages paid to its employees that are in excess of the taxable wage base as provided in s. 108.02 (21) (b) per employee for the calendar year. This sum shall be subtracted from the amount of covered wages and the remainder shall be reported on the employer's contribution report as "defined taxable payroll."

SECTION 12. DWD 110.09 (3) (b) is amended to read:

DWD 110.09 Termination of coverage.

(3) EMPLOYERS OF AGRICULTURAL LABOR OR DOMESTIC SERVICE.

(b) An employer of agricultural labor or domestic service that no longer meets the minimum payroll or employment requirements under s. 108.02 (13) (c) or (d), Stats., shall continue to report all payroll to the department as long as the employer is subject under another provision of s. 108.02 (13), Stats.

SECTION 13. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.